BEFORE THE MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
)	
LISA DOROTHEA BENARON, M.D.)	Case No. 800-2016-025606
)	•
Physician's and Surgeon's)	
Certificate No. G73527)	
)	
Respondent)	
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DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 19, 2019.

IT IS SO ORDERED June 20, 2019.

MEDICAL BOARD OF CALIFORNIA

Ronald H. Lewis, M.D., Chair

Panel A

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1	XAVIER BECERRA		
2	Attorney General of California STEVEN D. MUNI		
3	Supervising Deputy Attorney General JANNSEN TAN		
4	Deputy Attorney General State Bar No. 237826		
5	1300 I Street, Suite 125 P.O. Box 944255		
6	Sacramento, CA 94244-2550 Telephone: (916) 210-7549	·	
7	Facsimile: (916) 327-2247 Attorneys for Complainant		
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10	BEFORE THE		
11	MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS		
12	STATE OF C	ALIFORNIA	
13	,		
14	In the Matter of the Accusation Against:	Case No. 800-2016-025606	
15	LISA DOROTHEA BENARON, M.D. 3433 SW Dosch Rd	OAH No. 2019020975	
16	Portland, OR 97239-1425	STIPULATED SETTLEMENT AND	
17	Physician's and Surgeon's Certificate No. G 73527	DISCIPLINARY ORDER	
18	Respondent.		
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22		EED by and between the parties to the above-	
23	entitled proceedings that the following matters are true:		
24	<u>PAR</u>		
25	1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board		
26	of California (Board). She brought this action solely in her official capacity and is represented in		
27	this matter by Xavier Becerra, Attorney General of the State of California, by Jannsen Tan,		
28	Deputy Attorney General.	g .	
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- 2. Respondent Lisa Dorothea Benaron, M.D. (Respondent) is represented in this proceeding by attorney Robert H. Zimmerman, Esq., whose address is: 400 University Ave. Sacramento, CA 95825-6502
- 3. On or about March 4, 1992, the Board issued Physician's and Surgeon's Certificate No. G 73527 to Lisa Dorothea Benaron, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-025606, and will expire on September 30, 2019, unless renewed.

JURISDICTION

- 4. Accusation No. 800-2016-025606 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 20, 2018. Respondent timely filed her Notice of Defense contesting the Accusation.
- 5. A copy of Accusation No. 800-2016-025606 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-025606. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

- 9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-025606, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.
- 10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest those charges.
- 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

- 13. The parties agree that this Stipulated Settlement and Disciplinary Order for Public Reprimand shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulation after receiving it. Respondent acknowledges that she shall not be permitted to withdraw from this Stipulation unless it is rejected by the Board.
- 14. The parties agree that this Stipulated Settlement and Disciplinary Order for Public Reprimand shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulation, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any

member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulation, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulation for any reason, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulation or of any matter or matters related hereto. Respondent acknowledges that the Board shall not be disqualified from further action in this matter by virtue of its consideration of this matter.

ADDITIONAL PROVISIONS

- 15. This Stipulated Settlement and Disciplinary Order for Public Reprimand is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.
- 16. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including facsimile signatures of the parties, may be used in lieu of original documents and signatures and, further, that facsimile copies and signatures shall have the same force and effect as originals.
- 17. In consideration of the foregoing admissions and stipulations, the parties agree the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 73527 issued to Respondent Lisa Dorothea Benaron, M.D. shall be and hereby is publicly reprimanded pursuant to Business and Professions Code section 2227, subdivision (a)(4). As follows:

"You failed to verify if you had patient's consent to access his medical records, and you failed to maintain adequate medical records."

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B. EDUCATION COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in educational program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition. Any violation of this shall be considered unprofessional conduct and grounds for further disciplinary action.

C. PRESCRIBING PRACTICES COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later. Any violation of this shall be considered unprofessional conduct and grounds for further disciplinary action.

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D. MEDICAL RECORD KEEPING COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later. Any violation of this shall be considered unprofessional conduct and grounds for further disciplinary action.

$\mathbf{E}.$ PROFESSIONALISM PROGRAM (ETHICS COURSE)

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's

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27 28 expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later. Any violation of this shall be considered unprofessional conduct and grounds for further disciplinary action.

ACCEPTANCE -

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney. Robert H. Zimmerman, Esq. 1 understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarity, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

Respondent

I have read and fully discussed with Respondent Lisa Dorother Benaron, M.D. the terms and conditions and other matters contained in the above Stippilated Settlement and Disciplinary Order. I approve its form and coment.

ZIMMERMAN, ESQ. for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

Respectfully submitted,

XAVIER BECERRA

Attorney General of California STEVEN D. MUNI

Supervising Deputy Attorney General

JANNSEN TAN
Deputy Attorney General
Attorneys for Complainant

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4/30/2019

Exhibit A

Accusation No. 800-2016-025606

STATE OF CALIFORNIA XAVIER BECERRA MEDICAL BOARD OF CALIFORNIA Attorney General of California SACRAMENTO NOV 20 20 18 STEVEN MUNI Supervising Deputy Attorney General JANNSEN TAN Deputy Attorney General State Bar No. 237826 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 210-7549 6 Facsimile: (916) 327-2247 Attorneys for Complainant BEFORE THE 9 MEDICAL BOARD OF CALIFORNIA, DEPARTMENT OF CONSUMER AFFAIRS 1.0 STATE OF CALIFORNIA 11 12 Case No. 800-2016-025606 In the Matter of the Accusation Against: 13 ACCUSATION . Lisa Dorothea Benaron, M.D. 3433 SW Dosch Rd 14 Portland, OR 97239-1425 15 Physician's and Surgeon's Certificate No. G 73527, 16 Respondent. 17 18 19 Complainant alleges: 20 **PARTIES** Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official 21 capacity as the Executive Director of the Medical Board of California, Department of Consumer 22 23 Affairs (Board). On or about March 4, 1992, the Medical Board issued Physician's and Surgeon's 24 2. 25 Certificate No. G 73527 to Lisa Dorothea Benaron, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought 26 27 herein and will expire on September 30, 2019, unless renewed. 28

(LISA DOROTHEA BENARON, M.D.) ACCUSATION NO. 800-2016-025606

JURISDICTION

- 3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
 - 4. Section 2227 of the Code states:
- "(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
 - "(1) Have his or her license revoked upon order of the board.
- "(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- "(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- "(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- "(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
- "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."
 - 5. Section 2263 of the Code states:

"The willful, unauthorized violation of professional confidence constitutes unprofessional conduct."

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6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

- "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
 - "(b) Gross negligence.
- "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
- "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
- "(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
 - "(d) Incompetence.
- "(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.
 - "(f) Any action or conduct which would have warranted the denial of a certificate.
- "(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

¹ Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (Shea v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 575.)

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. Section 2242 of the Code states:

- "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.
- "(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:
- "(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.
- "(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:
- "(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.
- "(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.
- "(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.
- "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

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- 8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."
- 9. Sections 56.10, 56.1007, 56.101 of the Cal. Civ. Code provides in pertinent part that a provider of health care shall not disclose medical information regarding a patient without that patient's authorization.
- 10. Section 164.508, 164.502, 164.510,164.522 of the Code of Federal Regulations provide that a covered entity or business associate may not use or disclose protected health information without the individual's consent or as allowed by law.
- 11. Section 1364.5 of the Health and Safety Code provides in pertinent part that every health care service plan shall file with the director a copy of policies and procedures to protect patient medical information to ensure compliance with the Confidentiality of Information Act (Cal. Civ. Code Section 56.)

FIRST CAUSE FOR DISCIPLINE (Gross Negligence/Unprofessional Conduct)

- 12. Respondent has subjected her Physician's and Surgeon's Certificate No. G 73527 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, Sections 56.10, 56.1007, 56.101 of the Cal. Civ. Code, Section 164.508, 164.502, 164.510,164.522 of the Code of Federal Regulations, and Section 1364.5 of the Health and Safety Code, in that Respondent committed unprofessional conduct and/or gross negligence in violating confidentiality of Patient A², as more particularly alleged hereinafter:
- 13. In August of 2016, Patient A injured his left hand when he dropped a tractor wheel on his left hand. He told Respondent that he injured himself and sent Respondent a picture of his hand. Respondent and Patient A were friends. Patient A told Respondent that he thought of going to Prompt Care, affiliated with Enloe Medical Center, Chico, California. Patient A went to Prompt Care, where they took x-rays and adjusted his hand.

² To protect the privacy of the patient involved, the patient's name has not been included in this pleading. Respondent is aware of the identity of the patient referred to herein.

- 14. A few days later, Respondent texted Patient A that Respondent went to Enloe Medical Center and looked at Patient A's x-ray. Patient A did not authorize Respondent to look at his x-ray. Patient A was not Respondent's patient. Respondent believed that her actions were driven by goodwill and a desire to help.
 - 15. Patient A filed a complaint against Respondent with Enloe Medical Center.
- 16. In an email dated August 24, 2016, Respondent emailed Patient A's parents. Respondent stated that she was worried about Patient A's mental health. Respondent also discussed Patient A's injury, and admitted that she looked at Patient A's x-ray without his consent.
- 17. On or about December 9, 2016, the Board interviewed Patient A. During the interview, Patient A complained that Respondent had prescribed to a person without an examination, who would later be identified as Patient B, Xanax³, a controlled substance. Patient A stated that Respondent herself told him about this prescription to Patient B.
- 18. Respondent committed unprofessional conduct and/or gross negligence in her care and treatment of Patient A, which included, but was not limited to, the following:
 - A. Respondent accessed Patient A's x-ray without consent and/or authorization.
- B. Respondent shared information about Patient A to Patient A's parents without authorization.
 - C. Respondent shared Patient B's medical information with Patient A.

SECOND CAUSE FOR DISCIPLINE (Willful and Unauthorized Violation of Professional Confidence)

19. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2263, of the Code, in that Respondent willfully accessed and shared Patient A's confidential information without Patient A's authorization. Paragraphs 12 through 18, above, are hereby incorporated by reference and realleged as if fully set forth herein.

³ Alprazolam, brand name Xanax, is a short-acting anxiolytic of the benzodiazepine class of psychoactive drugs used for treatment of panic disorder, and anxiety disorders, It is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Dangerous Drugs without Appropriate Examination or Medical Indication)

- 20. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2242, of the Code, in that Respondent prescribed a controlled substance and dangerous drug to Patient B without an appropriate medical examination or medical indication, as more particularly alleged hereinafter:
- 21. On or about October 23, 2015, Respondent prescribed Xanax 60 quantity, .25 mg to Patient B. Respondent prescribed Xanax without seeing Patient B.
- 22. Respondent committed repeated negligent acts in her care and treatment of Patient B in that, she prescribed Xanax without a complete history and physical examination.

FOURTH CAUSE FOR DISCIPLINE (Repeated Negligent Acts)

23. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that she committed repeated negligent acts in her care and treatment of Patients A and B as more particularly alleged hereinafter:

Paragraphs 12 through 22, above, are hereby incorporated by reference and realleged as if fully set forth herein.

<u>FIFTH CAUSE FOR DISCIPLINE</u> (Failure to Maintain Adequate and Accurate Medical Records)

24. Respondent is further subject to discipline under sections 2227 and 2234, as defined by section 2266, of the Code, in that she failed to maintain adequate and accurate medical records in the care and treatment of Patient B, as more particularly alleged hereinafter:

Paragraphs 12 through 22, above, are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

(LISA DOROTHEA BENARON, M.D.) ACCUSATION NO. 800-2016-025606